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**IN THE
COURT OF APPEALS OF INDIANA**



HEARTFIELD STEELE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A04-0804-CR-250

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0703-FB-19

October 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Heartfield Steele appeals his conviction for Class B felony burglary. Specifically, he contends the evidence is insufficient to support his conviction. Concluding that the evidence is sufficient to support Steele's conviction, we affirm.

Facts and Procedural History

On March 16, 2007, at 11:30 p.m., Nicole Hall saw an African-American man in a black puffy winter coat pacing in front of her apartment complex in Lafayette, Indiana. At 1:30 a.m., Hall heard glass breaking nearby, looked out the window of her apartment, and saw the same man dive through the glass window of her neighbor Arlinda Stephenson's apartment. After watching for about five minutes, Hall called the police. Within a few minutes, Officer Humphrey, Officer French, and Officer Prothoro arrived on the scene.

Officers Humphrey and French approached the front door of the apartment while Officer Prothoro approached the back door. Officer Humphrey heard the shuffling of a plastic bag, like a garbage bag or store bag, inside the apartment. The front door was locked, but there was a hole two feet wide by one-and-one-half feet tall in the front window's glass. The hole was located about three-and-one-half feet up from the ground, and Officers Humphrey and French later testified that the hole was big enough for a person to jump through.

As the officers watched, an African-American man, later identified as Steele, wearing a black puffy winter coat exited through the front door of the apartment carrying a large box. Officer Humphrey identified himself and told the man to stop. Steele then

attempted to walk back into the apartment, but Officer Humphrey grabbed him, took him to the ground in an arm bar, and handcuffed him. While on the ground, Steele told the officers that the apartment belonged to his sister. Steele was transported to the police station. The officers remaining at the scene found a plastic garbage bag near the box the defendant had dropped when the officers arrested him. Inside the bag were a radio, a laptop computer, and some toiletry items. At the station, the officers photographed Steele's puffy coat, which had a large tear with stuffing falling out.

After receiving notice that her apartment had been burglarized, Stephenson, who had been away for two weeks, returned to her apartment. She found garbage from Popeye's in her trashcan, which scared her because she never eats Popeye's chicken, nor would her young children have been able to bring home food from Popeye's. Stephenson also testified that her window had been intact when she last left her apartment two weeks before the break-in.

At trial, Steele claimed that he had walked to Stephenson's apartment to retrieve some cigarettes he had given her earlier. Steele testified that he saw that the front door was open, pushed it open more, and called out for Stephenson. Hearing no response, Steele entered the apartment. Steele claimed that he was standing near the open doorway empty-handed when the police arrived. Stephenson testified that although she knew Steele, she had not given Steele either a key to her apartment or permission to enter her apartment.

The State charged Steele with Count I, Class B felony burglary, and County II, Class D felony theft. Following a bench trial, the trial court found Steele guilty of both

counts, with Count II merging into Count I. The trial court then vacated the Class D felony theft conviction and sentenced Steele to ten years for the Class B felony burglary conviction with eight years executed. Steele now appeals.¹

Discussion and Decision

Steele contends that the evidence is insufficient to support his conviction for burglary. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

In order to convict Steele of burglary as charged in this case, the State had to prove that Steele broke and entered the building or structure of another person with the intent to commit a theft therein. Ind. Code § 35-43-2-1. The offense is a Class B felony if the building is a dwelling. I.C. § 35-43-2-1(1)(B)(i).

¹ We notice that Steele's counsel has reproduced the entire transcript from this case in the Appellant's Appendix in addition to separately providing us with the complete trial transcript. Only one copy of the transcript is necessary.

On appeal, Steele argues that the “problem is that Hall could not identify Steele, other than as a black male. It is uncontrovereted [sic] that other persons had entered the apartment during Stephenson’s absence, as indicated by the unexplained Popeye’s garbage.” Appellant’s Br. p. 9. However, Hall testified at trial that she saw a man matching Steele’s description pacing outside the apartment and a short time later diving through her neighbor’s glass window. When the police arrived minutes later, they heard Steele rifling through a garbage bag filled with Stephenson’s goods and then observed Steele leaving Stephenson’s apartment carrying a box of her possessions. Regardless of the Popeye’s bag’s origins, the evidence is sufficient to convict Steele of burglary. Steele’s argument is merely an invitation for us to reweigh the evidence, which we will not do.

Steele argues that “the possibility of Steele actually fitting through the glass window is doubtful at best.” *Id.* However, Officer Humphrey and Officer French testified at trial that the hole was large enough for a man to fit through. Hall testified that she saw a man matching Steele’s description diving through the glass window. Again, Steele’s argument is merely an invitation for us to reweigh the evidence, which we will not do.

As for Steele’s explanation that he was just stopping by Stephenson’s apartment to obtain cigarettes and that he found the door unlocked when he arrived, the jury was entitled to disbelieve the defendant’s evidence and believe the State’s evidence; namely, Stephenson’s testimony that she and Steele were not friends and he did not have permission to enter her apartment as well as the officers’ testimony that the apartment

was locked with Steele inside when they arrived. *See Stephenson v. State*, 742 N.E.2d 463, 499 (Ind. 2001). The evidence is sufficient to support Steele's conviction for burglary.

Affirmed.

KIRSCH, J., and CRONE, J., concur.